

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

IN RE:

**ERNEST FRANKLIN DAVIS, SR. AND
MERTICE DAVIS**

Soc. Sec. Nos. xxx-xx-4114 & xxx-xx-8679
Mailing Address: Post Office Box 1132, Raeford, NC 28376-

**CHAPTER 13
CASE NO. 17-05153-5-JNC**

DEBTORS

MOTION TO MODIFY CHAPTER 13 PLAN

NOW COME the Debtors, by and through counsel undersigned, and move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case. In support hereof, the Debtors show the following:

1. This case was filed on October 20, 2017, with the Chapter 13 plan being subsequently confirmed on February 22, 2018.
2. The Debtors propose to modify the Chapter 13 plan in this case as follows:

From:

\$1,599.00 per month for a period of 60 months.

To:

\$1,426.00 per month for a period of 36 months, followed by
\$1,450.00 per month for a period of 48 months for a total plan length not to exceed seven (7) years from the date the first payment was due.

3. The changed circumstances that justify or necessitate the proposed modification are as follows: The Debtors have experienced a substantial decrease in monthly income. The male Debtor's job was eliminated due to COVID-19 and he does not expect to be able to go back to work. He has started receiving social security benefits, but the income is substantially lower than he was generating when he was actively employed. The proposed modification seeks to extend the plan to a total of seven (7) years from when the first payment was due under this confirmed plan as the Debtors have suffered a material financial hardship as a direct result of COVID-19.

4. The proposed modification conforms to the modification standards for a Chapter 13 plan set forth in Sections 1322(a), 1322(b), 1323(c) and 1325(a) of the Code.

5. The proposed modification changes the base amount of the Chapter 13 plan in this case from \$95,940.00 to \$120,936.00, and may reduce the dividend to be paid to unsecured creditors who have filed claims.

6. To facilitate the proposed modification, the Debtors request authorization for the Trustee to pay the claims of residual secured creditors over the full life of the Chapter 13 plan, however, the Debtors request that if there otherwise was no dividend required or established to be paid to unsecured creditors, that after month 60 the plan shall conclude without further modification upon payment of all secured, administrative and priority claims.

Appended Application for a Non-base Attorney Fee

7. Attorney for the Debtors further applies herein, and in accordance with E.D.N.C. LBR 2016-1(a)(2) and (a)(6), for approval of an attorney fee for the services rendered regarding this Motion to Modify. The presumptive attorney fee of \$500.00 for a Motion to Modify has already been calculated into the proposed modified plan. The Debtors request that this fee be paid to the Debtors' attorney through the plan as soon as practicable. Thereafter, starting with the 63rd month from the date the first payment came due in this case, and no more frequently than every three months thereafter, the attorneys for the Debtors may file a fee application.

WHEREFORE, the Debtors pray that this Court grant this Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$500.00 to pay for the services rendered regarding this Motion to Modify, to be paid by the Trustee as an administrative expense out of funds available in the Chapter 13 plan as soon as practicable. Counsel undersigned requests that starting with the 63rd month from the date the first payment came due in this case, and no more frequently than every three months thereafter, the attorneys for the Debtor may file a fee application.

Dated: October 22, 2020

LAW OFFICES OF JOHN T. ORCUTT, P.C.

s/ Jason Watson

Jason Watson
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DEBTORS

NOTICE OF MOTION

The Debtors have filed papers with the court to modify the Chapter 13 plan in this case in accordance with 11 U.S.C. § 1329, together with an application by the Debtors' counsel for approval of an additional attorney fee in accordance with E.D.N.C. LBR 2016-1.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this motion, or if you want the court to consider your views on the motion, then on or before November 16, 2020, you or your attorney must file with the court, pursuant to E.D.N.C. LBR 9013-1 and 9014-1, a written response, an answer explaining your position, and a request for hearing at: Clerk, U.S. Bankruptcy Court, P.O. Box 791, Raleigh, N.C. 27602.

If you mail your response to the court for filing, you must mail it early enough so that court will **receive** it on or before the date stated above. **You must also send a copy to the following:**

John T. Orcutt Attorney 6616-203 Six Forks Rd. Raleigh, N.C. 27615	Joseph A. Bledsoe, III CHAPTER 13 TRUSTEE Post Office Box 1618 New Bern, NC 28563
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If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the motion at a date, time and place to be later set and all parties will be notified accordingly. If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in this motion and may enter an order granting that relief.

Dated: October 22, 2020

LAW OFFICES OF JOHN T. ORCUTT, P.C.

s/ Jason Watson

Jason Watson
Attorney for the Debtors
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CERTIFICATE OF SERVICE

I, Gabrielle Morrison, of the Law Offices of John T. Orcutt, P.C., do hereby certify, under penalty of perjury, that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age; and that on October 22, 2020, I served copies of the foregoing Motion and Notice of Motion, upon the following parties, by automatic electronic noticing:

Joseph A. Bledsoe, III
Chapter 13 Trustee

and upon the following parties, either by automatic electronic noticing or regular first-class mail:

ERNEST FRANKLIN DAVIS, SR. AND
MERTICE DAVIS
Post Office Box 1132
Raeford, NC 28376-

All creditors named on the attached mailing matrix.

s/ Gabrielle Morrison
Gabrielle Morrison

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